IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

WP(C).No. 1045 of 2004(Y)

PETITIONER:

P.K. DEVI, KAKKANA HOUSE,
PERUKANNA, KOZHIKODE.

BY ADV. SRI.BABU JOSEPH KURUVATHAZHA

RESPONDENTS:

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1. KERALA MOTOR TRANSPORT WORKERS
WELFARE FUND BOARD, KOZHIKOE, REPRESENTED BY
ITS DISTRICT EXECUTIVE OFFICER, OFFICE
OF THE KERALA MOTOR TRANSPORT WORKERS
WELFARE FUND BOARD, KOZHIKODE.

2. SPECIAL DEPUTY TAHSILDAR (ARREARS
COLLECTION), KOZHIKODE-4.

R1 BY ADV. SRI.P.RAMAKRISHNAN, SC,KMTWF BOARD
R2 BY G.P. SMT. SMITHA SUKUMARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/12/2007, ALONG WITH WPC NO. 34244 OF 2005 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WPC 1045/04)

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE PROCEEDINGS NO. K.DIS. 5194/91 DATED 18.9.91 ISSUED BY THE TAHSILDAR, KOZHIKODE.

EXT.P2 TRUE COPY OF THE DEMAND NOTICE NO. DR 88/03-04 DATED 7.11.2003 ISSUED BY THE 2ND RESPONDENT.

EXT.P3 TRUE COPY OF THE DEMAND NOTICE NO. DR 89/03-04/KMT DATED 7.11.2003 ISSUED BY THE 2ND RESPONDENT.

EXT.P4 TRUE COPY OF THE DEMAND NOTICE NO. DR 90/03-04/KMT DATED 7.11.2003 ISSUED BY THE 2ND RESPONDENT.

EXT.P5 TRUE COPY OF THE DEMAND NOTICE NO. DR 91/03-04/KMT. DSATED 7.11.2003 ISSUED BY THE 2ND RESPONDENT.

EXT.P5(a) TRUE COPY OF THE REPRESENTATION DATED 26.11.2003 FILED BY THE PETITIONER BEFORE THE RESPONDENTS.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

W.P.C. NOs.1045/04 & 34244/05

Dated this the 3rd day of December, 2007

JUDGMENT

Petitioners who are the widow and children of the defaulter are challenging the revenue recovery proceedings for recovery of arrears of motor transport workers welfare fund contribution due from the defaulter who was carrying on stage carriage operation. Standing counsel submitted that liability pertains to three stage carriages pertaining to different periods. If the petitioners had any grievance against the final determination orders, it was for the petitioners to have collected the orders and filed appeals against the same, as the defaulter is no more and petitioners are the legal heirs. It is seen that in the very same matter O.P.No. 21824 of 1997 and WPC 1045 of 2004 were filed by the petitioner and this Court directed the petitioners to file claim petition before the recovery authorities so that their self-acquired properties are not proceeded against. In fact, the present Writ Petitions are unnecessary because in the judgment dated 10.12.1997 in OP No. 21824 of 1997 this Court gave freedom to the petitioners to make claim

petition before the Tahsildar. Recovery has to be necessarily against the property of the defaulter, whether inherited by the petitioners and other legal heirs or not. W.Ps. are accordingly disposed of leaving freedom to the petitioners to file claim petition under Section 46 of the RR Act before the recovery authority. If they prove that any property proceeded against is that of their personal property and not devolved upon, transferred or inherited by them from the defaulter, such property will be excluded. Recovery authority will proceed to sell the property only after disposal of the claim petition filed by the petitioners or any other legal heir.

(C.N. RAMACHANDRAN NAIR)
Judge